

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
OFFICE OF THE CLERK**

Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157

Elisabeth A. Shumaker
Clerk of Court

April 05, 2017

Chris Wolpert
Chief Deputy Clerk

Mr. Keith Robert Nachbar
Keith R. Nachbar, P.C.
123 West 1st Street
Suite 205
Casper, WY 82601-0000

RE: 17-8028, United States v. Herbert
Dist/Ag docket: 2:16-CR-00104-SWS-1

Dear Counsel:

The court has received and docketed your appeal. Please note your case number above. Copies of the Tenth Circuit Rules, effective January 1, 2017, and the Federal Rules of Appellate Procedure, effective December 1, 2016, may be obtained by contacting this office or by visiting our website at <http://www.ca10.uscourts.gov>. In addition, please note all counsel are required to file pleadings via the court's Electronic Case Filing (ECF) system. You will find information regarding registering for and using ECF on the court's website. We invite you to contact us with any questions you may have about our operating procedures. Please note that all court forms are now available on the court's web site.

Please note effective December 1, 2016 multiple important changes to the Federal Rules of Appellate Procedure took effect. The changes include new word length requirements for briefs and amendment of the "three-day service" rule. Please visit our website at <http://www.ca10.uscourts.gov> to familiarize yourself with these changes.

Attorneys must complete and file an entry of appearance form within 14 days of the date of this letter. *See* 10th Cir. R. 46.1(A). Pro se parties must complete and file the form within thirty days of the date of this letter. An attorney who fails to enter an appearance within that time frame will be removed from the service list for this case, and there may be other ramifications under the rules. If an appellee does not wish to participate in the appeal, a notice of non-participation should be filed via ECF as soon as possible. The notice should also indicate whether counsel wishes to continue receiving notice or service of orders issued in the case.

Although attorneys who file a notice of appeal have technically entered an appearance, and may not withdraw without the court's permission, counsel must still file a separate entry of appearance form. For criminal appeals, please note the court will require trial counsel to continue the representation whether retained or appointed, until an order issues allowing withdrawal. This is the case even if you did not sign the notice of appeal. *See* 10th Cir. R. 46.3(A). This initial continuity of counsel ensures that any criminal defendant who wishes to appeal has that appeal perfected.

Generally, the court will not allow counsel to withdraw until an entry of appearance form and the docketing statement are filed. *See* 10th Cir. R. 46.3(A). If there is an issue regarding the defendant's eligibility for the appointment of counsel, an appropriate motion must be filed in the district court. Where this is the case, it may be appropriate to file a motion seeking to extend the time for filing the motion to appoint or withdraw under the court's Criminal Justice Act plan.

You are required to file a docketing statement within 14 days of filing the notice of appeal. If you have not yet filed that pleading, you should do so within 14 days of the date of this letter. Please note that under 10th Cir. R. 3.4(B), the appellant is not limited to the issues identified in his docketing statement and may raise other appropriate issues in the opening brief.

In addition to the docketing statement, all transcripts must be ordered within 14 days of the date of this letter. If no transcript is necessary, you must file a statement to that effect.

As appointed counsel, you are required to file a designation of record with the district court. You must also file a copy with this court. Under 10th Cir. R. 10.2(A)(1), that designation must be filed within 14 days of filing the notice of appeal. If you have not done so already, you should file the designation immediately.

In addition, and also within 14 days of filing the notice of appeal, all appointed counsel must file *either* a motion to continue the CJA appointment or a motion to withdraw. *See* 10th Cir. R. 46.3(B). Any motion to withdraw must comply with 10th Cir. R. 46.4(A).

Under 10th Cir. R. 10.2(A)(2), the government may file an additional designation within 14 days after service of appellant's designation. Once that time passes, the district court will complete assembly of the record. The district court clerk will transmit the record to this court and will notify the parties. *See* Fed. R. App. P. 11(b)(2); 10th Cir. R. 11.2(A).

The opening brief is due forty days after the appellate record is filed. *See* Fed. R. App. P. 31(a)(1); *see also* 10th Cir. R. 31.1(A).

Briefs must satisfy all requirements of the Federal Rules of Appellate Procedure and Tenth Circuit Rules with respect to form and content. *See* specifically Fed. R. App. P. 28 and 32 and 10th Cir. R. 28.1, 28.2 and 32, as well as 31.3 when applicable. As applicable, we encourage all counsel to be familiar with 10th Cir. R. 46.4(B). Seven hard copies of briefs must be provided to the court within two days of filing via the court's Electronic Case Filing system. *See* 10th Cir. R. 31.5 and the court's [CM/ECF User's Manual](#). Counsel are encouraged to utilize the court's [Briefing & Appendix checklist](#) when compiling their briefs.

Motions for extension of time to file briefs must comply with 10th Cir. R. 27.1 and 27.5. These motions are not favored.

Thank you very much for your service to the court in your role as appointed counsel. If you are unfamiliar with the court's procedures or have questions, please call this office. In addition, you might also call the Appellate Division, created by the court to handle appeals circuit-wide, of the Office of the Federal Public Defender in Denver. That number is 303-294-7002. One of the appellate assistants will be happy to help you.

Please contact this office if you have questions.

Sincerely,

A handwritten signature in black ink, reading "Elisabeth A. Shumaker". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Elisabeth A. Shumaker
Clerk of the Court

cc: Timothy J Forwood

EAS/at